

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

GLENN A. PRIOR,
Petitioner

v.

ROBERT HOFMANN,
Respondent

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File No. 1:08-cv-139

ORDER

The Magistrate Judge's Report and Recommendation was filed November 18, 2008. (Paper 14.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Respondent's motions to dismiss (Papers 8 and 11) are GRANTED. Petitioner's habeas petition filed pursuant to 28 U.S.C. § 2254 (Paper 4) is DENIED and this case is hereby DISMISSED without prejudice for failure to exhaust state court remedies. All other pending motions, including the respondent's motion for extension of time (Paper 8), the petitioner's motions to expedite and accept jurisdiction (Paper 10) and to appoint counsel (Paper 13) are DENIED as moot.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). In addition, because the petition has been dismissed on procedural grounds, the petitioner cannot be issued a COA due to his failure to demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 29th day of December, 2008.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge